

# Guidance Document 6

## Administrative Settlements

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# Guidance Document 6

## Administrative Settlements

### PURPOSE

The purpose of this document is to provide guidance when preparing administrative and legal settlement justifications. This guidance document is intended to supplement and provide detail in the application of the settlement criteria contained in **Section 7.2, Negotiation Process**.

### AUTHORITY

Section 20.23(3)(a), Florida Statutes  
Section 334.048(3), Florida Statutes

### REFERENCES

Section 7.2, Negotiation Process  
Section 73.092, Florida Statutes

### 6.1 Settlement Criteria

The following factors, as applicable, should be considered and to the extent possible addressed in **Form No. 575-030-24, Settlement Approval**:

- (A) **Information Contained in All Available Appraisals and Business Damage Reports, Including those of the Owner:** Consider any information in available reports which might create exposure to a higher value being determined at trial. The written narrative should:
  - (1) Clearly state the information and estimate the monetary effect;
  - (2) Explain the use of any information which was specifically rejected by the review appraiser as inappropriate or unsupported; and
  - (3) Discuss any information not previously reviewed with the Department's appropriate expert and document the results of the discussion.
  
- (B) **Substantial Differences of Opinion Regarding Valuation Issues:** Consider the impact that a substantial difference of opinion between experts

may have on the outcome of litigation, such as, the determination of highest and best use. The written narrative should:

- (1) Set out the specific issues causing the difference of opinion;
- (2) Clearly explain the legitimacy of the opposing opinion including whether it is supported by an appraisal report or other written information;
- (3) Explain how this difference may create a substantive exposure at the time of litigation;
- (4) Provide a monetary estimate of the exposure; and
- (5) Document the results of discussion of the issues with the review appraiser.

**(C) Complexity of Severance or Other Issues Leading to Uncertainty in Value:** Identify complex valuation issues such as severance damages which may have an unfavorable impact on the litigation outcome. The written narrative should:

- (1) Provide a specific analysis of the issues and the estimated monetary exposure; and
- (2) Indicate the results of discussion of the issues with the review appraiser.

**(D) Handling of Legal Issues in Approved Appraisals:** Identify any items in the approved appraisal which are not in accordance with the current assessment of relevant legal issues as interpreted by the Department's attorney. The written narrative should:

- (1) Explain the specific circumstances and the possible impact on value; and
- (2) Document the results of discussion of the issues with the review appraiser.

**(E) Consideration of Time to Anticipated Title Transfer Date:** Apply a time adjustment to the amount of just and full compensation, if appropriate. The written narrative should:

- (1) State the basis for the time adjustment including the adjustment calculation; and

- (2) If the approved appraisal did not include a time adjustment, explain why such an adjustment is applicable despite its omission from the approved report.
- (F) **Credibility of Expert Witnesses:** Identify the strengths and weaknesses of expert witnesses for both the Department and the owner. The written narrative should:
  - (1) Identify any anticipated weaknesses in the Department's expert witness testimony, and the possible impact on the litigation outcome; and
  - (2) Indicate whether this criterion is being considered as a major or minor factor in the justification.
- (G) **Likelihood of Jury Sympathy for the Owner:** Analyze intangible items such as an owner's age, health or public image which might influence a jury. The written narrative should:
  - (1) State why there is a presumption of jury sympathy; and
  - (2) Document whether this criterion is considered a major or minor factor in the justification.
- (H) **Possibility of Obtaining an Unbiased Jury:** Juries are presumed to be unbiased. However, if a rare set of specific circumstances exist which are expected to create a bias against the Department, this may be considered as a factor in recommending a settlement. The written narrative should:
  - (1) Explain why a jury may be biased; and
  - (2) Document whether this criterion is considered a major or minor factor.
- (I) **Recent Court Awards for Eminent Domain Takings:** Consider recent jury verdicts for similar properties acquired in the same geographic area by eminent domain. The written narrative should:
  - (1) Not presume a verdict based on a 50/50 split between the Department's and owner's testimony; and
  - (2) Include a specific analysis of verdicts considered and the source of all data.

- (J) **Potential Cost of Litigation:** Consider the anticipated cost of supporting the eminent domain action and identify the savings expected to result from avoiding some, or all, of this cost. The cost of potential litigation refers to any cost that would be incurred in the future if the parcel were not settled; i.e., an estimate of additional cost beyond that already incurred. The written narrative should list each cost that is expected to be avoided by approval of the settlement. Cost of litigation can include, but is not limited to:
- (1) Outside counsel fees;
  - (2) The owner's attorney fees based on the fee schedule set forth in **Section 73.092, Florida Statutes**;
  - (3) Expert witness fees, Department's and owner's;
  - (4) Any other court costs, court reporters, jury transportation, etc.; and
  - (5) Statutory interest on the difference between the Order of Taking deposit and the anticipated verdict, excluding business damages. The justification must include a calculation of the estimated interest exposure and an explanation of the basis of that calculation.
- (K) **Other Relevant Information:** If there is other relevant information which would support a settlement, it should be explained in the written justification.

## 6.2 Coordination with a Department Attorney

When the settlement is an administrative settlement, the criteria described in items (F), (G), (H), and (J), should be discussed with the Department's assigned attorney and the discussion should be documented in the settlement justification. If a Department attorney has not been assigned to the specific parcel being administratively settled, the criteria may be discussed with the Office of the General Counsel or designee.

### TRAINING

None required.

### FORM

The following form is available on the Infonet and Internet:

575-030-24, Settlement Approval